American Civil Liberties Union of Ohio Foundation, Inc. v. DeWeese Doc. 1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMERICAN CIVIL LIBERTIES UNION OF OHIO FOUNDATION, INC. **1266 West Sixth Street** **Cleveland, Ohio 44113** **Plaintiff,** **v.** **HON. JAMES DEWEESE, sued here in his official capacity as a judge of the Richland County Court of Common Pleas** **50 Park Avenue East** **Mansfield, Ohio 44902** **Defendant.**	)	**Civil Action No.: _____________** **Judge: ______________________** **COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF, COSTS & STATUTORY ATTORNEY FEES**

INTRODUCTION

1. This is a challenge to the constitutionality of the display and maintenance of a poster depicting, *inter alia* , the Ten Commandments in the courtroom of Defendant Judge James DeWeese in the Common Pleas Court of Richland County, Ohio. The conduct of the

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defendant in this regard has the obvious effect of advancing and endorsing religion, and of improperly entangling the State in religious affairs.

2. Plaintiff seeks a declaration that the defendant's maintenance of the Ten Commandments display referenced herein constitutes a violation of the Establishment Clause of the First Amendment of the United States Constitution, and further seeks an injunction prohibiting the defendant from maintaining such display, or any substantially similar display, now or in the future.

JURISDICTION AND VENUE

3. The claims for relief and the causes of action alleged herein arise under the First and Fourteenth Amendments to the Constitution of the United States and under Article I, §7 of the Constitution of the State of Ohio.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1343, and 42 U.S.C. §1983.

5. Declaratory and injunctive relief is sought pursuant to 28 U.S.C. §§2201 and 2202, and 42 U.S.C. §1983.

6. Venue is proper in this Court under 28 U.S.C. §1391(b) because Defendant resides in this State and because a substantial part of the events that are the subject of this action arose in this judicial district.

THE PARTIES

7. Plaintiff American Civil Liberties Union of Ohio Foundation, Inc. ("ACLU") is a non-profit foundation whose mission is to defend fundamental rights and civil liberties and whose members include persons who reside within Richland County.

8. Defendant the Honorable James DeWeese is an elected judge of the General Division of the Common Pleas Court of Richland County, Ohio , who was, at all times relevant hereto, acting under color of state law, and pursuant to his authority to set the policies, practices, customs and usages in the Richland County Common Pleas Court.

9. The courtroom of defendant Judge DeWeese contains on one wall a large poster prominently displaying a version of the Ten Commandments, a sacred text to Christians and Jews derived from the Biblical book of Exodus, and in juxtaposition thereto, a listing of seven quotations labeled "Moral Relatives: Humanist Principles." Accompanying these listings, across the top and bottom of the poster is a commentary attributed to Defendant as the author which makes an invidious comparison between the Ten Comandments ("Moral Absolutes") and the Humanist Principles ("Moral Relatives"). (Said poster is hereinafter referred to as "Ten Commandments Poster.")

FIRST CAUSE OF ACTION

(First Amendment and Fourteenth Amendments to U.S. Constitution
& 42 U.S.C. §1983 – declaratory relief)

10. Plaintiff incorporates by reference each and every statement, allegation and averment set forth in paragraphs 1 through 9 above as if fully restated herein.

11. Defendant, by causing , allowing and maintaining the Ten Commandments display, as described herein, has violated the constitutional doctrine of separation of church and state in violation of the Establishment Clause of the First Amendment to the United States Constitution made applicable to the states through the Fourteenth Amendment.

12. Defendant's actions as described herein are acts and conduct performed under color of law within the meaning of 42 U.S.C. § 1983.

13. Defendant's actions, as described herein, constitute a custom, usage, or policy within the meaning of 42 U.S.C. §1983.

14. Defendant's actions, as described herein, have no legitimate secular purpose, and are motivated by a desire to advance a religious purpose, or to endorse one or more particular religions or religion in general.

15. Defendant's actions, as described herein, have the effect of advancing or endorsing one or more particular religions or religion in general.

16. Defendant, actions, as described herein, improperly entangled the state in religious affairs, issues, or institutions.

17. The Ten Commandments Poster constitutes an offensive affront to the religious sensibilities of members of the ACLU residing in Richland County, making such members feel like outsiders who are being coerced by their own county government into observing the cannons of a particular religion.

18. Defendant's actions in posting the Ten Commandments Poster and in the Poster's statements that the "Moral Absolutes," *i.e.*, the Ten Commandments, are the proper and necessary standards for people to follow constitute an endorsement of religion by the Common Pleas Court of Richland County, Ohio, and reasonably leave those who might come before the court not sharing that religious viewpoint, including members of the ACLU residing in Richland County, reasonably to doubt that they can receive fair and impartial justice in that Court.

19. An actual controversy exists between Plaintiff and Defendants as to the constitutionality of Defendant's maintenance of the Ten Commandments Poster.

SECOND CAUSE OF ACTION
(First Amendment Establishment Clause and Fourteenth Amendment & 42 U.S.C. § 1988)

20. Plaintiff incorporates by reference paragraphs 1 through 19 above as if fully restated herein.

21. Defendants' unconstitutional acts described above have resulted in irreparable injury to local members of the ACLU of Ohio and to the general public.

22. Plaintiff and its members have no adequate remedy at law. Monetary damages cannot repair the constitutional injury that Defendant's acts have caused and, upon information and belief, will continue to cause from the continued maintenance of a religious display in his courtroom.

23. Defendant's conduct, as described herein, constitutes actions taken under color of law that has caused and upon information and belief, unless enjoined, will continue to cause, a deprivation of constitutional rights in violation of the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment and 42 U.S.C. § 1983.

24. As a Direct result of the unconstitutional actions of Defendants, described herein, attorney's fees and costs have been and will continue to be incurred on Plaintiff's behalf.

THIRD CAUSE OF ACTION

(Violation of rights secured under Article I, § 7 of the Ohio Constitution)

25. Plaintiff incorporates by reference paragraphs 1 through 24 above as if fully restated herein.

26. Defendants' actions as described herein violate Article I, § 7 of the Ohio Constitution.

27. An actual controversy exists between Plaintiff and Defendants as to the constitutionality of Defendant's maintenance of a religious display.

28 As a direct result of these unconstitutional actions, local members of the ACLU of Ohio and other like minded citizens and residents have suffered and will continue to suffer severe and irreparable harm and injury to their rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests:

A. That this Court declare that Defendant's conduct, as described herein, has violated the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment, and Article I, § 7, of the Constitution of the State of Ohio;

B. That this Court enter a permanent injunction enjoining Defendant, in his official capacity, and his successors in office, and all their respective agents, employees and others in active concert with them from continuing to maintain the Ten Commandments Poster, or any substantially similar display.;

C. That this Court award Plaintiff reasonable attorney fees and court costs incurred in prosecuting this action, pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 54(d);

D. That this Court grant such additional relief, legal or equitable, as the Court deems appropriate.

Respectfully submitted,

/s/Carrie L. Davis
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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Complaint was served upon the following this 7th day of October, 2008:

Hon. James DeWeese
Richland County Courthouse
50 Park Avenue East
Mansfield, OH 44902

/s/Carrie L. Davis
Carrie L. Davis (OH 0077041)
ACLU of Ohio